

Original

Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, DC 20554

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Federal Communications Commission
Office of Secretary

In the Matter of)
 Implementation of Section 621(a)(1) of)
 the Cable Communications Policy Act of 1984)
 as amended by the Cable Television Consumer)
 Protection and Competition Act of 1992)

MB Docket No. 05-311

COMMENTS OF CITY OF YUMA, ARIZONA

These Comments are filed by the City of Yuma, Arizona in support of the comments filed by the Alliance for Community Media ("Alliance"), the Alliance for Communications Democracy, the National Association of Telecommunications Officers and Advisors ("NATOA"), and other national local government organizations. Like NATOA and the Alliance, the City of Yuma, Arizona believes that local governments can issue an appropriate local license for new entrants into the video services field on a timely basis, just as they have for established cable services providers. In support of this belief, we wish to inform the Commission about the benefits of cable franchising and the Public, Educational, and Government Access ("PEG") services in our community.

Cable Franchising in Our Community

Community Information

The City of Yuma, Arizona is a city with a population of 90,000. Our licensed cable provider is Adelphia/Time Warner. Our community has had a negotiated cable license since September 20, 1960.

Our Current License

Our current license began on July 1, 2005 and expires on June 30, 2010.

Our license requires the cable operator to pay a license fee to the city in the amount of 5% of the cable operator's gross revenues. The revenues for license fee purposes are calculated based on the gross revenues of the operator, in accordance with the Federal Cable Act.

Our license requires the cable operator to provide the following capacity for public, educational, and/or governmental ("PEG") access channels on the cable system. We currently have up to six (6) channels devoted to public, education, and government access

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The 1995 license allowed \$450,000 for capital expenditures and for the term of the license as well as \$30,000 per year for personnel costs (with an annual cost of living adjustment).

Our 1995 license contained the following institutional network ("I-Net") requirements:

"The Licensee will install a shadow coaxial cable for PEG use from each location identified by a single asterisk as I-Net locations on Exhibit B to the nearest subscriber network fiber node or headend and connect such coaxial cable to the optical fibers at such nodes reserved for PEG use. For purposes of this section, the headend shall be treated as a fiber node; Licensee shall not be required to connect coaxial cable to optical fibers at the headend, if unnecessary.

Licensee shall reserve two (2) optical fibers at each fiber node location on the subscriber network throughout the City for PEG use. The City may require Licensee to provide up to two additional fibers to the two highest density optical nodes, to be determined during the design phase. The parties will devise a spectrum allocation plan for uses toward the goal of minimizing the use of special frequency equipment.

Activation. The I-NET or any portion of the I-Net shall be activated within six (6) months of the City's request, but not before the earlier of (A) the date the rebuild is scheduled to be completed or (B) the date the rebuild is completed.

I-Net Capacity. The I-NET reserved for PEG use, as initially activated, shall be at least a 450 MHz, high split I-NET."

It has been modified from its original language to require a dedicated two (2) One GHz fiber optic cables

We use our I-Net facilities in the following ways: to connect all City of Yuma facilities for telecommunications use such as data and voice transmission and emergency communications; transport of video programming signals from remote facilities for use on the PEG channels; remote training of Fire Department, Public Works and other City personnel.

Our license contains the following requirements regarding emergency alerts: "The Licensee shall install and thereafter maintain for use by the City an Emergency Alert System ("EAS"). This EAS shall be remotely activated by telephone and shall allow a representative of the City to override the audio on all channels on the System in the event of a civil emergency or for reasonable tests. The Licensee will also provide for the activation, by sequential tones, of a device with a blinking light or similar signal that could be purchased by subscribers and would be adequate to alert the hearing-impaired that the EAS system was being used. These emergency alert requirements provide an important avenue of communication with our residents in the event of an emergency." An example of when this function has been helpful is the following: In June 2005 an AV8-B Harrier jet operating out of Marine Corps Air Station – Yuma crashed while on emergency approach to the base. The plane was loaded with active ordinance and went down in the middle of a Yuma neighborhood. During this incident, over 2,500 homes had to be evacuated. Information was provided to the community via the cable system.

PEG Access Services

The City of Yuma, in partnership with Arizona Western College and Northern Arizona University has provided access services in our community for eight years. The number of access channels we operate is five. We offer local government programming in both English and Spanish, programming covering the National Aeronautics and Space Administration – NASA, local community college and university programming. In our most recently completed fiscal year, the City, AWC, and NAU provided over 500 hours of new original local programming to the cable subscribers. Below are the highlights of our services to the community.

- Video bulletin board with text and graphics for community information (in both English and Spanish).
- Coverage of City Council, Planning and Zoning Commission, community planning forums, town hall meetings, and neighborhood board meetings.
- Locally-produced television programming for special interests (such as – veterans, seniors, non-English-speaking, ethnic and cultural groups, youth, people with disabilities, advocacy groups, health care, etc.)
- Staff-produced television programming on topics of interest to the local community.
- Nationally produced programming not normally available via the local network affiliates.
- Interactive programs that allow local experts to answer viewer questions.
- Free viewing of cable service at selected public sites.
- Local news coverage of issues not normally covered by local broadcast stations.
- Media literacy and production training for neighborhood based community organizations and individuals.
- Video production courses.
- Video production facilities including studio, field, editing, and, if available, remote van.
- Support to local schools, enhancing learning opportunities for students.
- Satellite program reception and redistribution.
- Technical design, installation, and maintenance support.
- Open mic format service such as a free speech soap box during the City Council meetings.

- Local political coverage during campaign season.
- Distance learning: Programming delivered to public and private institutions, facilitating distribution of for-credit instruction.
- Distribution of community college and university educational programming.
- Coverage of state legislative sessions, hearings, and other select proceedings.
- Gavel-to-gavel coverage of local government meetings/hearings and other select "local" governmental proceedings.
- Interactive participation in government meetings at community sites.
- Election night coverage.
- "24-Hour City Hall" video streaming of government video programming.
- Local services via I-Net and cable modem. (High speed data, voice, and video linkage between public buildings. This includes services such as traffic light monitoring, live interactive court arraignments, video transmission to remote sites, emergency communications services such as 911, and subscriber broadband access.)

The Franchising Process

Under the law, a cable license functions as a contract between the local government (operating as the local franchising authority) and the cable operator. Like other contracts, its terms are negotiated. Under the Federal Cable Act it is the statutory obligation of the local government to determine the community's cable-related needs and interests and to ensure that these are addressed in the franchising process – to the extent that is economically feasible. However derived (whether requested by the local government or offered by the cable operator), once the license is approved by both parties the provisions in the license agreement function as contractual obligations upon both parties.

While a license is negotiated by the local government as a contract, the process provides notice requirements for the public and the cable operator under state and local law. For instance: Community Meetings, Needs Assessments, Public Hearings, and City Council Actions (Ordinances)

Competitive Cable Systems

Our community 1) has never been approached by a competitive provider to provide service, 2) has not denied any provider the opportunity to serve in our community and 3) does

have mechanisms in place to offer the same or a comparable license to a competitor upon request. In fact, our current license contains the following:

“Grant Not Exclusive: The right to use and occupy the Public Rights-of-Way shall not be exclusive and does not explicitly or implicitly preclude the issuance of other Licenses to operate Cable Systems within the City; affect the City's right to authorize use of Public Rights-of-Way by other Persons to operate Cable Systems or for other purposes as it determines appropriate; or affect the City's right to itself construct, operate, or maintain a Cable System, with or without a License.”

Conclusions

This NPRM is only looking retrospectively at one aspect of the franchising process. We believe that the Commission must look to the future of the public's interest in telecommunication's services. The existing franchising process has provided a basis for public interest services appropriately tailored to each community's local needs. We believe that those services such as PEG should be required of all broadband telecommunications providers.

The local cable franchising process has functioned well in Yuma, Arizona. As the above information indicates, we are experienced at working with cable providers, the local license authority, and community interests to both see that the needs of the local community are met and to ensure that the practical business needs of cable providers are taken into account.

Local cable franchising ensures that local cable operators are allowed access to the rights of way in a fair and evenhanded manner, that other users of the rights of way are not unduly inconvenienced, and that uses of the rights of way, including maintenance and upgrade of facilities, are undertaken in a manner which is in accordance with local requirements. Local cable franchising also ensures that our local community's specific needs are met and that local customers are protected.

Local licenses can also ensure that the cable operator provides the PEG Access services which are responsive to the local community needs as determined through community needs assessments and the local knowledge of educators, local elected officials and local nonprofit organizations.

Local licenses thus provide a means for local government to appropriately oversee the operations of cable service providers in the public interest, and to ensure compliance with applicable laws. There is no need to create a new Federal bureaucracy in Washington to handle matters of primarily local interest.

Local licenses allow each community, including ours, to have a voice in how local cable systems will be implemented and what features (such as PEG access, institutional networks or local emergency alerts, etc.) will be available to meet local needs. These factors are equally present for new entrants as for existing users.

The City of Yuma therefore respectfully requests that the Commission take this opportunity to reaffirm the primacy of local government authority over franchising and should make clear that imposition on a new entrant of PEG Access, consumer protections and other public interest services requirements that are equivalent to those of the incumbent does not constitute an unreasonable refusal to award an additional competitive license within the meaning of federal law.


The PEG Access model should be strengthened and applied to new technologies, assuring that localism and community participation are not displaced by commercial interests.

The nation would be well served by a policy of "Community Reinvestment" through PEG Access that includes funds and bandwidth and/or spectrum that will be used for public purposes by:

1. Allowing the local community which owns the public rights-of-way to license and determine the best use of the community's property;
2. Dedicating ten percent of the public airwaves and capacity on communication facilities that occupy public rights-of-way to PEG use for free speech, diverse points of view, local programs, community based education and political speech;
3. Mandating funding of five percent of gross revenues above and beyond any license fee to local authorities from all infrastructure and service providers and spectrum licensees to support PEG equipment, facilities, training and services; and,
4. Making PEG Access universally available to any consumer of advanced telecommunications services capable of full-motion video.

Respectfully submitted,

City of Yuma, Arizona


By: Gregory Dean Hyland, CPM
Strategic Communications Manager
City of Yuma
One City Plaza – Post Office Box 13014
Yuma, Arizona 85366-3014

cc: Alliance for Community Media, Getup@allianceccm.org